In the Supreme Court of the United States

OCTOBER TERM, 1949

No. 612

DOROTHY MAY ARNOLD DAVIS, PETITIONER

v.

GRETCHEN A. PROSE AND UNITED STATES OF AMERICA

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEAL FOR THE SEVENTH CIRCUIT

MEMORANDUM FOR THE UNITED STATES

This case involves a dispute between the petitioner, Dorothy May Arnold Davis, who as stepmother stood in *loco parentis* to the deceased, an Army enlisted man, and Gretchen A. Prose, sister of the deceased, as to the disposition of the proceeds payable by the Government under a $5,000 life insurance policy issued to the deceased under the National Service Life Insurance Act.

Respondent filed a claim for the proceeds of the policy with the Veterans Administration, which claim was denied. On appeal, the Board of Veteran Appeals, on May 6, 1947, affirmed this denial and awarded the proceeds to petitioner

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in accordance with the Veterans Administration regulations. Respondent brought suit on June 27, 1947, in the United States District Court for the Southern District of Indiana. The United States admitted liability under the National Service Life Insurance certificate to the proper beneficiary as determined in the action.

In the District Court it was stipulated that petitioner stood in *loco parentis* to the deceased for more than one year during the deceased's minority and prior to his enlistment in the Army. Respondent contended that the deceased had "performed sufficient acts to effectuate his intention to name his sister [respondent] beneficiary of his insurance." However, the District Court held that, as the policy showed the named beneficiary to be the father of the deceased who died during the deceased's lifetime, the regulations of the Veterans Administration required the proceeds to go to the petitioner. On appeal, the Court of Appeals for the Seventh Circuit reversed, on October 26, 1949, holding that the deceased had expressed an intention to change the beneficiary and had affirmatively acted during his lifetime to name his sister, the respondent, as his beneficiary.

Because the Government has no interest in this controversy other than to pay the proceeds of the insurance, admittedly due, to the proper beneficiary, the Government in effect occupies the role

of a stakeholder and therefore takes no position as to whether the writ of certiorari should issue.

Respectfully submitted.

PHILIP B. PERLMAN,
Solicitor General.

MARCH 1950.

U. S. GOVERNMENT PRINTING OFFICE : 1950